

**PUBLIC EMPLOYMENT RELATIONS BOARD
FOR THE STATE OF DELAWARE**

INTERNATIONAL LONGSHOREMAN’S ASSOCIATION)	
LOCAL 1694-1, AFL-CIO,)	Review of Hearing
)	Officer’s Decision
Petitioner,)	
)	
STATE OF DELAWARE, DIAMOND STATE)	<u>ULP No. 04-12-461</u>
PORT CORPORATION)	
)	
Respondent.)	

Appearances

*Bernard K. Katz, Esq., Meranze & Katz, for ILA 1694-1
Jerry M. Cutler, Manager of Labor Relations, for the State*

BACKGROUND

The State of Delaware (“State”) is a public employer within the meaning of §1302(p) of the Public Employment Relations Act (“PERA”), 19 Del.C. Chapter 13 (1986). The Diamond State Port Corporation is an agency of the State.

International Longshoreman’s Association, Local 1694-1, AFL-CIO (“ILA”) is an employee organization which admits to membership DSPC employees and has as a purpose the representation of those employees in collective bargaining, pursuant to 19 Del.C. §1302(i). ILA, by and through its Local 1694-1, represents a bargaining unit of DSPC employees (as defined by

DOL Case # 103) for purposes of collective bargaining and is certified as the exclusive bargaining representative of those units. 19 Del.C. §1302(j).

ILA Local 1694-1 and the State are parties to a collective bargaining agreement which has an expiration date of September 30, 2004. The parties entered into negotiations concerning a successor agreement on or about September 15, 2004, at which time ILA provided the State with its initial proposals for modifications to the predecessor agreement.

On or about December 23, 2004, ILA filed an unfair labor practice charge alleging the State violated 19 Del.C. §1307(a)(5), which provides:

- (a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:
 - (5) Refuse to collectively bargain in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit, except with respect to a discretionary subject.

The State filed its Answer to the Charge on or about December 29, 2003, in which it denied all material allegations of the ILA Charge.

The Hearing Officer dismissed the Charge without prejudice on February 1, 2005, finding the pleadings failed to establish probable cause to believe there had been a failure by the State to bargain in good faith, when viewed in the context of the parties' on-going negotiations. The Hearing Officer directed the parties to return to the bargaining table and to advise PERB of the status of their negotiations, including an indication as to whether the parties were willing to enter into PERB sponsored mediation.

On or about February 8, 2005, ILA 1694-1 requested review of the Hearing Officer's decision by the full Public Employment Relations Board, pursuant to PERB Regulation 7.4. The State responded on February 11, 2005.

A copy of the complete record in this matter was provided to each member of the Public Employment Relations Board. The Board met in public session on March 16, 2005, to consider the ILA's request. At that meeting, both ILA 1694-1 and the State presented oral argument.

POSITIONS OF THE PARTIES

ILA 1694-1:

The ILA argues the Hearing Officer preempted its opportunity to prove its charge by not permitting the case to proceed to hearing.

The ILA argues that had the matter proceeded to hearing, it would have presented evidence to show that the State delayed the initiation of negotiations until after the expiration date of the prior agreement as a strategic ploy intended to thwart negotiations. The State's proposal to not make wage increases retroactive to the expiration of the prior agreement supports this argument.

The ILA also argues the State attempted to unlawfully condition negotiations by requiring the ILA to concede to modifying the bargaining unit by raising the threshold for members from 800 to 1500 hours worked per calendar year.

The ILA stated it did not oppose mediation and was willing to enter into PERB sponsored mediation in order to move the negotiations toward a successful conclusion. It argues that the simultaneous processing of the instant unfair labor practice charge would have not impact upon the negotiations.

STATE:

The State argues that the Charging Party is required to include in its charge sufficient information to allow PERB to determine whether there is probable cause to believe that an unfair

labor practice has occurred. The State asserts there was ample evidence on the record (including the attachments to the Charge) and that the Hearing Officer properly concluded there had been no failure to bargain in good faith during the limited course of collective bargaining between these parties.

The State objects to the ILA's attempt to supplement and create a new record before the full PERB. It argues the ILA could have included all of the information it seeks to argue before the Board on the record at the time the charge was filed. Alternatively, the ILA could have refiled the Charge and included the additional information.

The State argues the Hearing Office properly crafted the decision to move the parties back into negotiations. It indicated that, like the ILA, the State had no objection to moving the negotiations into PERB sponsored mediation and indicated that a mediator had been assigned and that the first mediation session was scheduled.

DISCUSSION

Upon consideration of the record and arguments of the parties, the Board unanimously affirms the Hearing Officer's decision to dismiss this Charge.

The Delaware General Assembly conferred upon the Public Employment Relations Board authority and responsibility to “. . . assist in resolving disputes between public employees and public employers . . .” 19 Del.C. §1301(3). The statute also requires employers and unions to “enter into collective bargaining negotiations with the willingness to resolve disputes relating to terms and conditions of employment and to reduce to writing any agreements reached through such negotiations.” 19 Del.C. §1301(2).

The scope of the Board's review of a Hearing Officer or Executive Director's decision is limited to the record created by the parties and addresses whether the decision is arbitrary,

capricious, contrary to law, or otherwise unsupported by the record. Review by the full Board is based upon the record which was before the Hearing Officer. An appeal before the PERB is not a *de novo* proceeding.

The statute requires the Hearing Officer to issue a probable cause determination based upon a review of the pleadings. As such, charges must include sufficient information to support the charge being made.

In this case, the ILA seeks to provide greater detail in its request for review than it did in its initial pleadings. The charge was, however, dismissed without prejudice so the ILA could have refiled the Charge after its dismissal and included the new information which it alleges supports its assertions that the State has refused to bargain in good faith.

On review, the Board must also consider whether there is sufficient evidence to support the Hearing Officer's conclusion. Should we find there is not, the matter can be remanded to the Hearing Officer to further develop the record and reconsider the decision. We find that the Hearing Officer did not err in dismissing this charge based upon the information presented in the pleadings.

We also find the Hearing Officer acted appropriately in steering the parties back to negotiations and moving this matter to mediation.

WHEREFORE, the Hearing Officer's decision to dismiss this Charge for failing to establish probable cause to believe that an unfair labor practice has been committed is affirmed in its entirety.

IT IS SO ORDERED.


ELIZABETH D. MARON, Acting Chairperson


R. ROBERT CURRIE, JR., Member


KATHI A. KARSNITZ, Member

Dated: June 1, 2005